

aa-v

IN THE DISTRICT COURT OF THE STATE OF UTAH
IN AND FOR UTAH COUNTY
oOo

Provo Reservoir Company, :
a corporation, :

Plaintiff :

vs :

Provo City, Lincoln School, :
District, et al, :

Defendants :

* * * * *

Civil Action No. 2888.

State of Utah:
County of Utah: SS

R. J. Murdock being first duly sworn, deposes and says:
That he is the Secretary of the above named plaintiff and makes
this affidavit for and on behalf of said plaintiff.

That during the year 1912, Honorable A. B. Morgan, the pre-
sent presiding judge of the Fourth Judicial District Court of the
State of Utah, was a practicing lawyer, residing at Provo City, Utah
County, State of Utah, and the duly qualified and acting city attor-
ney of said Provo City.

That during the months of April, May and June, 1912, and
ever since ~~that~~ said time, there were disagreements and disputes
arising between the plaintiff and the defendants concerning the
right to the use of the waters of Provo River, and in order to avoid
litigation in respect thereto, several meetings were held which were
attended by the plaintiff and numerous defendants. That the said
presiding judge was a legal representative of the defendants Provo
City and the Timpanogas Canal Company, and attended each and all of
said meetings, at which said meetings the claims of the respective
parties to the right to the use of the waters of Provo River were
presented and fully discussed. That the questions discussed at
said meetings were and are the identical questions involved in
the above entitled cause. That by reason of the failure of the
plaintiff and defendants to reach an amicable settlement concerning
said matter, this suit was commenced on February 6, 1914 for the
purpose of adjudicating the rights of plaintiff and defendants to
the use of the waters of Provo River.

That the first meeting between plaintiff and defendants
hereinbefore referred to, was held at the office of the Provo Reser-

voir Company at Provo City, April 30, 1912, at which said meeting said presiding judge in substance made the following statements: That in behalf of Provo City, Timpanogas Canal Company and the Upper East Union Irrigation Company he had protested against the application of the plaintiff herein for the appropriation of the water of Provo River (which said water described in said application of the plaintiff is one of the important matters involved in this controversy) and he further stated in substance that Mr. J. W. N. Whitecotton had filed protests for others; that the protesting was a formal matter so that no rights would be waived. He further stated in substance that referring to hydrographic survey, the farmers seem to think decrees quieted title to water and vested the rights, and that if we agree to a hydrographic survey, there will have to be a great deal of expense incurred and all of the rights will have to be proved over again.

The second of said meetings was held at the office of the Provo Reservoir Company, Provo City, Utah, on May 9, 1912, at which said meeting the said presiding judge again took part and in substance made the following statements, to-wit: He said that when the volume of water in Provo River exceeds 30,000 minute feet, each canal, including the Provo Reservoir Company's canal, should take all the water they wanted and that after the volume of water of Provo River falls to 30,000 minute feet and until it reaches 17,400 minute feet, the canals take their proportion under the Morse Decree, provided, that when the river receded to such a point that all can be used beneficially upon the land under the old canals, then the Provo Reservoir Company cease to store water, but let it flow freely down the river channel.

Said presiding judge during the course of said meeting, further stated in substance: That the concencious of opinion as he found it by conferring among the companies and their shareholders, was against a hydrographic survey and favored the harmonious workings of the water commissioners of Summit, Wasatch and Utah Counties in distributing the waters of Provo River. He further said that all would favor a peaceable settlement, but regarded their canal capacities to be their measure of their rights to the use of high water and desired to hear from President Murdock as to what he regarded to be a proper distribution of high water. After considerable discussion by other persons, said presiding judge in

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substance stated: That the developments trend toward a settlement without the hydrographic survey and without a state water commissioner. He further stated in substance that the basis of agreement should take into account the ability or disability of various companies to permit a duty of 60 acres per second foot. After considerable discussion by others, said presiding judge again made the following statement in substance: That the meeting be adjourned for one week, in order that the various canal companies might authorize action, looking toward a working agreement, but eliminating the hydrographic survey and district water commissioner before looking toward the authorizing by the Provo District Court of the county water commissioner to act as court commissioner also. After considerable discussion, said meeting adjourned.

The third of said meetings was held at the office of the Provo Reservoir Company on May 16, 1912. Said presiding judge at said meeting made a motion in substance: That a representative of Provo City and each canal company and private interest in Utah, Wasatch and Summit Counties be appointed to form a working agreement for the year 1912 and eliminate the question of a hydrographic survey and state water commissioner, and that we request the county commissioners to appoint water commissioners, and that the District Court be requested to affirm those appointments, making them court commissioners also. After some discussion, said presiding judge spoke in favor of the motion made by him. After further discussion by others at said meeting, said presiding judge in substance stated: That he considered a commissioner appointed by the state would be most effective if all the water were decreed by court, but as things are now, the high water would have to be distributed by stipulation, and that therefore, we must arrange to form an agreement among ourselves, and our legal commissioners can handle the problem of distribution. After further discussion, said meeting adjourned.

The fourth of said meetings was held at the office of Provo Reservoir Company on May 23, 1912, at which meeting said presiding judge was elected temporary secretary and took the minutes of said meeting in his own hand writing, and among other things moved that each company and interest report to the committee in two weeks the approximate number of acres watered under each canal and private in-

terest, which said motion was seconded and carried. After further discussion said meeting adjourned.

The fifth of said meetings was held on June 6, 1912 at the office of the Provo Reservoir Company, Provo, Utah, at which said meeting said presiding judge was again present and took part at said meeting concerning the matters in controversy in the above entitled cause.

The sixth and last of said meetings was held on June 20, 1912 at which said meeting said presiding judge moved that J. T. Farrer be recommended to the county commissioners of Utah County and the District Court to be appointed as a water commissioner.

Affiant further says upon information and belief, that during the whole of the year 1912 while said presiding judge was the attorney for said Provo City and said Timpanogas Canal Company, that he counselled with and advised said clients concerning what he conceived to be the legal rights of said defendants, and advised them that they were entitled to take water from Provo River to the full carrying capacity of their canals before the plaintiff would be entitled to take any water from said river and that he still entertains the views then expressed to said defendants, which said views are controverted by the plaintiff and other defendants herein.

That by reason of the facts as hereinbefore stated, affiant believes that said presiding judge is disqualified from trying this cause under the provisions of Section 692 of the Revised Statutes of Utah, unless each and every party to this action shall consent to said presiding judge trying the same, and in view of the fact hereinbefore stated the plaintiff feels that it cannot consent to said presiding judge trying said cause.

R. J. Mumlock

Subscribed and sworn to before me this 8 day of October,



J. E. Booth
Notary Public